

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Emergency Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-5, 18VAC105-20-70; adding 18VAC105-20-48, 18VAC105-20-49).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Dates: October 30, 2017, through April 29, 2019.

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Preamble:

Regulations for optometrists prescribing of controlled substances containing opioids are being promulgated as emergency regulations to address the opioid abuse crisis in Virginia. On November 16, 2016, State Health Commissioner Marissa Levine declared the opioid addiction crisis to be a public health emergency in Virginia. In a news conference about the opioid crisis, Governor McAuliffe noted that the declaration would "provide a framework for further actions to fight it, and to save Virginians' lives." One of those "further actions" is adoption of emergency regulations by the Board of Medicine and the Board of Nursing setting out rules for prescribing opioids and buprenorphine and by the Board of Dentistry for prescribing of opioids for acute pain. Although optometrists are only authorized to prescribe Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III, IV, and VI controlled substances, the Board of Optometry has determined that it should also adopt emergency regulations.

Section 2.2-4011 of the Code of Virginia authorizes an agency to adopt emergency regulations necessitated by an emergency situation upon consultation with the Attorney General, and the necessity for the action is at the sole discretion of the Governor. The declaration by Commissioner Levine is indeed evidence that such an emergency situation exists in the Commonwealth.

The emergency regulations for the management of acute pain include requirements for (i) prescribing a dosage not to exceed seven days, (ii) the evaluation of the patient, and (iii) limitations on quantity. Requirements for prescribing of an opioid beyond seven days include a reevaluation of the patient, check of the Prescription Monitoring Program, and specific information in the patient record. In addition, if a therapeutic pharmaceutical agent-certified optometrist finds an opioid prescription for chronic pain is necessary, he must refer the patient to a physician or comply with Board of Medicine regulation for managing chronic pain.

18VAC105-20-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Acute pain" means pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months.

"Board" means the Virginia Board of Optometry.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through V.

"MME" means morphine milligram equivalent.

"NBEO" means the National Board of Examiners in Optometry.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-48. Prescribing an opioid for acute pain.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, a TPA-certified optometrist shall follow the regulations for prescribing and treating with opioids.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, a TPA-certified optometrist shall perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

C. Initiation of opioid treatment for all patients with acute pain shall include the following:

1. A prescription for an opioid shall be a short-acting opioid in the lowest effective dose for the fewest number of days, not to exceed seven days as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

2. A TPA-certified optometrist shall carefully consider and document in the patient record the reasons to exceed 50 MME per day.

3. A prescription for naloxone should be considered for any patient when any risk factor of prior overdose, substance misuse, or concomitant use of benzodiazepine is present.

D. If another prescription for an opioid is to be written beyond seven days, a TPA-certified optometrist shall:

1. Reevaluate the patient and document in the patient record the continued need for an opioid prescription; and

2. Check the patient's prescription history in the Prescription Monitoring Program.

E. The patient record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed (including date, type, dosage, strength, and quantity prescribed).

F. Due to a higher risk of fatal overdose when opioids are prescribed for a patient also taking benzodiazepines, sedative hypnotics, tramadol, or carisoprodol, a TPA-certified optometrist shall only co-prescribe these substances when there are extenuating circumstances and shall document

in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

18VAC105-20-49. Prescribing an opioid for chronic pain.

If a TPA-certified optometrist treats a patient for whom an opioid prescription is necessary for chronic pain, he shall either:

1. Refer the patient to a doctor of medicine or osteopathic medicine who is a pain management specialist; or
2. Comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120 (see [33:16 V.A.R. 1930-1931 April 3, 2017](#)), if he chooses to manage the chronic pain with an opioid prescription.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.
2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, ~~or~~; new or advanced clinical devices, techniques, modalities, or procedures; or pain management.
3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.
4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).
5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31 unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically, or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers, or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.